

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 07-N-12245-DFM
	)	
<b>RANDY E. BENDEL,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 130569,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

This matter was initiated by the filing of a Notice of Disciplinary Charges (NDC) by the State Bar of California, Office of the Chief Trial Counsel (State Bar), alleging that respondent Randy E. Bendel (respondent) willfully violated rule 955 of the California Rules of Court (rule 955)<sup>1</sup> by failing to timely file a compliance affidavit as required by rule 955, subdivision (c). The State Bar was represented in this matter by Deputy Trial Counsel Margaret P. Warren (DTC Warren). Respondent did not participate in this proceeding either in person or through counsel.

For the reasons stated below, the court finds that respondent willfully failed to comply with rule 955. The court therefore recommends that respondent be disbarred from the practice of law and that he be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4).<sup>2</sup>

---

<sup>1</sup>Effective January 1, 2007, rule 955 was renumbered and is now rule 9.20. However, as respondent was specifically ordered to comply with rule 955 prior to the effective date of this renumbering, this decision will refer to the rule as rule 955.

<sup>2</sup>Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

### **PERTINENT PROCEDURAL HISTORY**

This proceeding was initiated by the State Bar's filing of a NDC against respondent on July 3, 2007.

A copy of the NDC was properly served on respondent on July 3, 2007, by certified mail, return receipt requested, addressed to the official membership records address (official address) maintained by respondent pursuant to section 6002.1, subdivision (a). The NDC was returned by the U.S. Postal Service bearing a stamp "Not deliverable as addressed / Unable to forward." (Declaration of DTC Warren attached to the State Bar's motion for the entry of respondent's default.)

On July 11, 2007, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for August 15, 2007. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on July 11, 2007, addressed to respondent at his official address. The copy of said notice was returned to the State Bar Court by the U.S. Postal Service bearing a sticker stating:

RETURN TO SENDER  
NOT DELIVERABLE AS ADDRESSED  
UNABLE TO FORWARD

On August 15, 2007, the court held an in person status conference in this matter. Respondent failed to appear either in person or through counsel at the time of the status conference. Thereafter, on August 21, 2007, the court filed an order pursuant to the status conference. A copy of said order was properly served on respondent by first-class mail, postage fully prepaid, on August 21, 2007, addressed to respondent at his official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

Between June 13 and August 3, 2007, the State Bar made various attempts to contact or locate respondent. Attempts by the State Bar to contact or locate respondent by mail, telephone, e-mail, Yahoo People Search, 411.com, WhitePages.com, Zabasearch.com, and through the Parker Directory were unsuccessful. As of August 9, 2007, the State Bar had not had any contact from respondent.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of

Procedure of the State Bar of California (Rules of Procedure), on August 9, 2007, the State Bar filed a motion for the entry of respondent's default. Attached to the motion were the declarations of DTC Warren and State Bar law clerk Balpreet Thiara, as well as Exhibits 1 through 4. The motion advised respondent that once the court found culpability, the State Bar would recommend respondent's disbarment. A copy of said motion was properly served on respondent on August 9, 2007, by certified mail, return receipt requested,<sup>3</sup> addressed to respondent at his official address.

Respondent failed to file a written response within 10 days after service of the motion for the entry of his default. Consequently, on September 11, 2007, the court filed an Order of Entry of Default (Rule 200 - Failure to File Timely Response), Order Enrolling Inactive and Further Orders. The order advised that no default hearing would be held unless one was requested by the State Bar. The order also permitted the State Bar to file any further declarations, exhibits, or legal argument regarding the level of discipline by no later than September 25, 2007. A copy of said order was properly served on respondent on September 11, 2007, by certified mail, return receipt requested, addressed to respondent at his official address. The copy of said order was returned to the State Bar Court by the U.S. Postal Service bearing a stamp stating:

RETURNED TO SENDER  
NOT DELIVERABLE  
AS ADDRESSED,  
UNABLE TO FORWARD

On September 14, 2007, the State Bar mailed courtesy copies of the State Bar Court's September 11, 2007 Order of Entry of Default to respondent at eight different addresses.<sup>4</sup> The courtesy copies were sent to respondent's current and former membership records addresses, and to an additional possible address identified in the State Bar's motion for entry of respondent's default.

---

<sup>3</sup> The State Bar's motion for entry of respondent's default did not include a certified copy of respondent's address history. The court therefore takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that effective February 17, 2005, respondent's official address has been and remains P.O. Box 5064, West Hills, CA 91308.

<sup>4</sup> On September 14, 2007, the State Bar filed a notice of service on respondent of courtesy copies of State Bar Court's September 11, 2007 order of entry of default. Attached to this notice, as Exhibit 1, was the declaration of service.

On September 21, 2007, the State Bar filed a brief on the issues of culpability and discipline and waived its right to request a hearing in the matter. This matter was therefore submitted for decision on September 21, 2007.

Exhibits 1 through 4 attached to the State Bar's motion for the entry of respondent's default, Exhibits 1 and 2 attached to the State Bar's notice of service on respondent of courtesy copies of State Bar Court's September 11, 2007 order of entry of default, and Exhibits 1 through 3 attached to the State Bar's brief on the issues of culpability and discipline are admitted into evidence.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>5</sup>**

Respondent was admitted to the practice of law in the State of California on December 14, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

On June 9, 2006, the Supreme Court of California filed a disciplinary order in case number S126314 (State Bar case number 06-PM-10698). The June 9, 2006 order required respondent to comply with rule 955 and to perform acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the order.

Notice of the order was duly and properly served on respondent in the manner prescribed by rule 29.4, subdivision (a), of the California Rules of Court <sup>6</sup> at respondent's address as maintained by the State Bar in accordance with section 6002.1. The June 9, 2006 order became effective on July 9, 2006, and at all times thereafter remained in full force and effect.

Rule 955, subdivision (c), requires that a member file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered pursuant to this rule. The deadline for respondent to comply with rule 955, subdivision (c), expired on August 18, 2006.

---

<sup>5</sup>Pursuant to Evidence Code section 452, subdivision (a), the court takes judicial notice of rule 955. Additionally, as respondent's default was entered in this matter, the factual allegations contained in the NDC are deemed admitted pursuant to rule 200(d)(1)(A) of the Rules of Procedure.

<sup>6</sup>Effective January 1, 2007, rule 29.4(a) was renumbered as rule 8.532(a), but the language of the rule did not change.

Respondent failed to comply with rule 955, subdivision (c), prior to the August 18, 2006 deadline. As of July 3, 2007, respondent had not complied with rule 955, subdivision (c).

“Willful” in the context of rule 955 implies simply a purpose or willingness to commit the act, or make the omission, referred to. It requires neither bad faith nor an intent to violate the rule. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.) The Supreme Court has disbarred attorneys whose failure to keep their official address current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) The filing of an affidavit pursuant to rule 955, subdivision (c), is required even if the respondent does not have any clients to notify. (*Id.*)

Based on the foregoing, the court concludes that the State Bar has proven by clear and convincing evidence that by failing to file the compliance affidavit within the time specified in the June 9, 2006 order, respondent willfully failed to comply with rule 955, subdivision (c).

### **MITIGATING CIRCUMSTANCES**

#### **No Mitigating Factors**

As respondent’s default was entered in this matter, respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

### **AGGRAVATING CIRCUMSTANCES**

#### **Respondent’s Prior Record of Discipline**

In aggravation, respondent has a record of two prior impositions of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i) (“standards”).)

On September 30, 2004, the Supreme Court issued an order in Supreme Court matter S126314 (State Bar Court Case No. 00-O-13391) suspending respondent from the practice of law for two years and until he pays court ordered sanctions, makes restitution, and provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). The execution of said suspension was stayed, and respondent was placed on probation for two years subject to conditions of probation, including six months actual suspension and restitution. In that matter, respondent was found culpable of willfully violating section 6068(d) by employing means inconsistent with the truth and seeking to mislead a

judge; section 6103 by failing to obey a court order; section 6068(c) by maintaining an unjust action; and rule 3-200(A) of the Rules of Professional Conduct of the State Bar of California by bringing an action without probable cause and for a malicious purpose. In mitigation, respondent performed pro bono work, had no prior record of discipline, and presented testimony as to his good character. In aggravation, respondent engaged in multiple acts of wrongdoing, committed additional uncharged misconduct, and caused significant harm to his client and other parties.

On June 9, 2006, in a default proceeding for willfully violating the conditions of his probation imposed in Supreme Court matter S126314 (State Bar Court Case No. 00-O-13391), the Supreme Court issued an order actually suspending respondent from the practice of law for two years and until he pays court ordered sanctions, makes restitution, and has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). In aggravation, it was found that respondent had one prior record of discipline and that he failed to fully participate in the proceeding. No mitigating factors were found. (Supreme Court matter S126314 (State Bar Court Case No. 06-PM-10698).)

### **Lack of Cooperation with State Bar During Disciplinary Proceedings**

In addition to respondent's prior record of discipline, respondent's failure to participate in this disciplinary proceeding prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

### **DISCUSSION**

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Standard 1.3.)

Rule 955, subdivision (d), provides in part that "[a] suspended member's willful failure to comply with the provisions of this rule constitutes cause for disbarment or suspension and for revocation of any pending probation." Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree of discipline to be imposed in the current proceeding must be

disbarment, unless the most compelling mitigating circumstances clearly predominate. In this matter, respondent has a record of two prior impositions of discipline, and no mitigating circumstances were found.

Timely compliance with rule 955 performs the critical function of ensuring that all concerned parties (including clients, co-counsel, opposing attorneys, and the courts) learn about an attorney's actual suspension from the practice of law. Compliance with this rule also keeps the State Bar Court and the Supreme Court apprised of the location of attorneys who are subject to their respective disciplinary authorities. (See *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Disbarment is generally the appropriate sanction imposed for willful violation of rule 955. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Similar discipline has been recommended in the past by the State Bar Court Review Department. (See, e.g., *In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322.)

Respondent has demonstrated an unwillingness to comply with his professional obligations and the rules of conduct imposed on lawyers. His disbarment is necessary to protect the public, the courts, and the legal profession; maintain high professional standards; and preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of an order of the California Supreme Court.

#### **RECOMMENDED DISCIPLINE**

Based on the foregoing, it is hereby recommended that respondent Randy E. Bendel be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of that rule within 40 days of the effective date of the order showing his compliance with said order.

#### **ORDER REGARDING INACTIVE ENROLLMENT**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and

Professions Code section 6007, subdivision (c)(4). Said inactive enrollment will be effective three days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, as provided for by rule 490(b) of the Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

**COSTS**

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December 6, 2007

---

DONALD F. MILES  
Judge of the State Bar Court